

**The Town and Country Planning (Notification)
(Unconventional Oil and Gas) (Wales) Direction 2015**

Guidance

Date of issue: 13 February 2015

The Town and Country Planning (Notification) (Unconventional Oil and Gas) (Wales) Direction 2015

Audience	Chief Planning Officers of Local Planning Authorities; Businesses; Government Agencies; Other Public Sector Groups; Professional Bodies and Interest Groups; Voluntary Groups and the general public.
Overview	This guidance and direction set out new requirements for local planning authorities to refer certain planning applications to the Welsh Ministers, to enable them to decide whether they wish to call in the application for their determination.
Action required	<p>For local planning authorities to be aware that from 16 February 2015:</p> <p>The direction requires planning applications for “Unconventional Oil and Gas Development” to be referred to Welsh Ministers, where the local planning authority does not propose to refuse them.</p>
Further Information	<p>Development Management Branch Planning Division Welsh Government Cathays Park Cardiff, CF10 3NQ Tel: 02920 823878 Email: planning.directorate@wales.gsi.gov.uk</p>
Additional copies	<p>This guidance is available from the Welsh Government website at: http://wales.gov.uk/topics/planning/policy/circulars/nafw/?lang=en</p>

Contents

Introduction

Context for New Direction

Commencement and Extent

The Direction

Purpose and Scope

Submission of Information to the Welsh Ministers

Restriction on the Grant of Planning Permission

Monitoring and Review

Annex 1 - The Town and Country Planning (Notification) (Unconventional Oil and Gas) (Wales) Direction 2015

The Town and Country Planning (Notification) (Wales) Direction 2015

INTRODUCTION

1. Section 77 of the Town and Country Planning Act 1990 (the “1990 Act”) allows the Welsh Ministers to give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order, to be referred to them instead of being determined by local planning authorities.
2. Article 18(1) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (S.I. 2012/801) (the “DMPO”) provides that the Welsh Ministers may give directions restricting the grant of planning permission by an LPA, either indefinitely or during such period specified in the directions, in respect of any development or in respect of any class so specified. In accordance with article 18(3), an LPA must deal with applications for planning permission for development to which such a direction applies in such manner as to give effect to the direction.
3. Article 22(5) of the DMPO provides that an LPA must provide such information about applications made under article 4 and 5 of that Order (applications for approval of reserved matter and applications for planning permission respectively), including information as to the manner in which any such application has been dealt with, as the Welsh Ministers may by direction require. Any such direction may include provision as to the persons to be informed and the manner in relation to which the information is to be provided.
4. The Town and Country Planning (Notification) (Unconventional Oil and Gas) (Wales) Direction 2015 (the “Direction”) is set out at Annex 1.
5. The notification requires that where a local planning authority do not propose to refuse an application for unconventional oil and gas development, the authority must notify the Welsh Ministers. Where a local planning authority are required to give such notification to the Welsh Ministers, the authority must not grant planning permission on the application until the expiry of the period of 21 days beginning with the date which the Welsh Ministers tell the authority in writing is the date upon which they received information specified in the Direction. However, the local planning authority may proceed to determine the application if before the expiry of that 21 day period, the Welsh Ministers notify the authority that the Welsh Ministers do not intend to call-in the application in question under section 77 of the 1990 Act in respect of that application, or if the Welsh Ministers do not consider the development to be unconventional oil and gas development..
6. This guidance is intended to ensure that the Welsh Ministers are notified only where necessary and all decisions are taken at the appropriate level.

CONTEXT FOR NEW DIRECTION

7. The Welsh Government has adopted a precautionary approach to the development of unconventional oil and gas resources in Wales. In support of this a approach this Notification Direction requires that where it is proposed to approve a planning application for unconventional oil and gas development which

would involve using hydraulically fracturing technology then the local planning authority must first refer the planning application to Welsh Ministers to determine whether the application should be called in.

8. This will provide Welsh Ministers an opportunity to consider whether appropriate scrutiny has been given to environmental and public health concerns, as these may raise issues of more than local importance. The Welsh Ministers may choose to call in the planning application, or if appropriate issue a direction that the application may not be approved until such time as directed by the Welsh Ministers.

COMMENCEMENT AND EXTENT

9. With effect from 16 February 2015, the guidance contained in this circular and the direction at Annex 1 will require planning applications for “Unconventional Oil and Gas Development” to be referred to Welsh Ministers, where the local planning authority does not propose to refuse them.

10. This guidance and the Direction at Annex 1, apply only in relation to Wales.

THE DIRECTION

11. The Direction does not affect the power of the Welsh Ministers under section 77 of the 1990 Act, to direct that any particular planning application should be called in for their own determination, irrespective of whether it falls within the terms of the new direction, having regard to their policy on call in.

PURPOSE AND SCOPE

12. The Direction clarifies the arrangements and criteria for notifying the Welsh Ministers in relation to planning applications for unconventional oil and gas development, that being development involving the onshore exploration, appraisal or production of coal bed methane or shale oil or gas using unconventional extraction techniques, including fracturing (but does not include the making of exploratory boreholes which do not involve the carrying out of such unconventional extraction techniques).

13. The purpose of the Direction is to give the Welsh Ministers an opportunity to consider whether to exercise their call in powers under section 77 of the 1990 Act.

NOTIFICATION REQUIREMENTS

14. Paragraph 3 of the Direction introduces a notification requirement for local planning authorities to refer applications for unconventional oil and gas development to the Welsh Ministers where the authority does not propose to refuse such an application. Such information may be sent to Welsh Ministers electronically, or in hard copy. The notification requirement is inclusive of the provision of the information specified in paragraph 5 of the Direction.

RESTRICTION ON THE GRANT OF PLANNING PERMISSION

15. Where the local planning authority is required to notify the Welsh Ministers, paragraph 6 of the Direction places a restriction on the grant of planning

permission for a period of 21 days, that period beginning with the date the local planning authority is notified in writing by Welsh Ministers as being the date that the information specified in paragraph 5 of the Direction was, received.

16. However, paragraph 7 of the Direction permits the authority to proceed to determine the application before the expiry of the 21 day period in circumstances where the authority have received notification in writing that the Welsh Ministers do not intend to call in, or do not consider the development to be unconventional oil and gas development.

MONITORING AND REVIEW

17. The Welsh Government will closely monitor the number of applications that are referred to the Welsh Ministers resulting from this notification requirement, and the numbers of applications that are consequently called in. Its effect will be reviewed when the new Direction has been operating for an appropriate period of time.

Neil Hemington
Chief Planner
Planning Directorate
Department for Natural Resources

Chief Executive:
County and County Borough Councils in Wales
The National Park Officer:
National Park Authorities

Annex 1

The Town and Country Planning (Notification) (Unconventional Oil and Gas) (Wales) Direction 2015

THE TOWN AND COUNTRY PLANNING (NOTIFICATION) (UNCONVENTIONAL OIL AND GAS) (WALES) DIRECTION 2015

The Welsh Ministers, in exercise of the powers conferred by articles 18(1) and 22(5) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012⁽¹⁾, give the following Direction.

Commencement

1. This Direction comes into force on 16 February 2015.

Interpretation

2. In this Direction—

“electronic communication” (“*cyfathrebiad electronig*”) has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation)⁽²⁾;

“unconventional oil and gas development” (“*datblygiad olew a nwy anghonfensiynol*”) means development involving the onshore exploration, appraisal or production of coal bed methane or shale oil or gas using unconventional extraction techniques, including hydraulic fracturing (but does not include the making of exploratory boreholes which do not involve the carrying out of such unconventional extraction techniques).

Application

3. This Direction applies to any application for planning permission—

- (a) relating to land in Wales;
- (b) made on or after 16 February 2015;
- (c) for development which is unconventional oil and gas development;
- (d) which the local planning authority does not propose to refuse.

Notification to the Welsh Ministers

4. Where a local planning authority do not propose to refuse an application for unconventional oil and gas development, the authority must notify the Welsh Ministers.

5. Where a local planning authority is required to notify the Welsh Ministers, they must as soon as practicable send to the Welsh Ministers by means of electronic communication or otherwise a copy of—

- (a) the application (including copies of any accompanying plans and drawings and any appropriate flood risk, transport, noise or other assessment) and supporting information;
- (b) the requisite notice;
- (c) any representations made to the authority in respect of the application (including any views expressed by a government department, another local planning authority or other consultee);
- (d) any report on the application prepared by an officer of the authority;

(1) S.I. 2012/801.

(2) 2000 c.7. Section 15(1) was amended by section 406(1) of and paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

- (e) any screening opinion issued under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁽³⁾;
- (f) any appropriate assessments carried out under the Conservation of Habitats and Species Regulations 2010⁽⁴⁾.

Relevant period before a local planning authority may grant planning permission

6. Subject to paragraph 7, where a local planning authority are required to notify the Welsh Ministers, the authority must not grant planning permission on the application until the expiry of the period of 21 days beginning with the date which the Welsh Ministers tell the authority in writing is the date upon which they received the information specified in paragraph 5.

7. The local planning authority may proceed to determine the application if before the expiry of the period referred to in paragraph 6, the Welsh Ministers notify the authority that—

- (a) the Welsh Ministers do not intend to issue a direction under section 77 of the Town and Country Planning Act 1990 in respect of that application; or
- (b) the Welsh Ministers do not consider the development to be unconventional oil and gas development.

Carl Sargeant

Minister for Natural Resources, one of the Welsh Ministers

13th February 2015

(3) S.I. 1999/293, to which there are amendments.

(4) S.I. 2010/490, to which there are amendments.